

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3648 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RABARI PUNA JETHA

Versus

DISTRICT MAGISTARATE

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Appearance:

MR SATISH R PATEL for Petitioner

MR KC SHAH, A.G.P., for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner Rabari Puna Jetha has brought under challenge the detention order passed against him on 27th February 1996 rendered by the first respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the petitioner - detenu has been carrying on criminal and anti-social activities of assaulting and beating the innocent people with the aid of his associates and creating atmosphere of fear. Following offences have been registered in Junagadh Taluka Police Station :

1. CR I-243/94 U/s.143, 147, 148, 149, 186, 332 IPC r/w. Section 135 of the Bombay Police Act. The matter is pending.
2. CR I-170/95 U/ss.333, 504, 506(2), 325 of the IPC & Sec.3(1), 10 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act read with Section 135 of the Bombay Police Act. The matter is pending for trial.

Following offences came to be registered in Junagadh City Police Station against the petitioner :

1. CR I-391/95 U/ss. 143, 147, 148, 149 of the I.P.Code and Section 135 of the Bombay Police Act. The matter is pending for trial.

3. The first matter indicates that the petitioner having formed an unlawful assembly with other persons assaulted the complainant - Forest Beat-guard and the witnesses, had beaten them with deadly weapons and had prevented them from performing their duties. In the second case the petitioner assaulted the complainant and caused grievous hurt to him and threatened him with knife. In the third case the petitioner having formed unlawful assembly with his associates had assaulted the complainant and others with stones and caused hurt. It has been recited that the detenu's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statement of four witnesses have been relied upon. They inter alia indicate the incidents occurring at different points of time, neither specified nor registered. The incidents are of threatening and beating of the witnesses and causing fear to the witnesses so that they are not able to come forward to file the complaints.

4. It is on the aforesaid incidents that the

Detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned Advocate for the petitioner and learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay as can be seen from Para : 18 of the petition, which reads as under :

"The petitioner submits that last offence C.R.No.

391 of 1995 was registered on 1.9.1995 and statements of witnesses are recorded on 29.9.1995 and verified on 30.9.1995 and order of detention has been passed on 27.2.1996 and served on 24.3.1996. The petitioner therefore submits that the order of detention has been passed after five months of recording the statements. Therefore, live link is snapped. The satisfaction of the detaining authority is not genuine. That there is a great delay in passing the order of detention. The continued detention has been illegal."

6. Although there is no affidavit in reply to the aforesaid ground of delay it has been submitted by Mr.K.C.Shah, learned A.G.P. that the delay can not be said to be inordinate so as to snap the live link in between the prejudicial activities of the petitioner and the purpose of detention. Now it is not in dispute that the last case is as old as of 1.9.1995, that is to say, almost five months before the date of impugned order of detention. It is also not in dispute that petitioner was enlarged on bail in the cases filed against him. It is in the context of such facts that reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There the reference was made to an earlier decision of the Apex Court in the case of T.A.Abul Rahman v. State of Kerala, (1989) 4 SCC 741 : (AIR 1990 SC 225). Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable

under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. As stated above in the present case there is sufficient delay so as to snap the live link between the prejudicial activity and the purpose of detention. It is under such circumstances that decision in P.N.Paturkar (Supra) would not be applicable to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N.Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Rabari Puna Jetha shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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